Cri Appeal 711/96

(Jail)
P.R.—5,000-9-81

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APPEAL OF PRISONER Division Bench (Criminal)

No. 929 Name जगदीश @ जगन्नाथ

Father's name लालिकदास

Residence ग्राम धनरेपता कपलपिंडी ४०४८

Sentenced to आजीवन कारावास 2000/ रुपये दंड या ६ माह on

Under section 302 IPC by प्रथम अपर सत्र न्यायाधीश अम्बिकापुर

If is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Yes/No

No. 929 Name जगदीश @ जगन्नाथ

Continued in अम्बिकापुर Jail

No. 510 dated 23/02/96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent
Distt. Jail Ambikapur (Surguja)
Superintendent-Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office 23/2/96

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court. 22/3/96

No. Q Dated 22/3/96 198

Forwarded to the माननीय 3-य सत्रन्यायालय सरगुजा अम्बिकापुर

CJ Mag
द्वितीय अतिरिक्त सत्र न्यायाधीश
अम्बिकापुर, जिला सरगुजा (म.प्र.)

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 711 of 1996

Appellant : Jagru @ Jagarnath

Vs.

Respondent : State of Madhya Pradesh

Mr. H.P. Agrawal with Mr. Rajendra Soni, learned counsel for the appellant..

Shri U.N.S. Deo learned G.A. for the respondent/State.

ORAL JUDGMENT
(03.03.2006)

L.C. Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has challenged the legality and correctness of the judgment of conviction and order of sentence dated 22.02.96 passed in Session Trial No. 159/94 whereby the learned I Additional Sessions Judge, Ambikapur, District Surguja after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and to pay a fine of Rs. 2000/-, in default of payment of fine to further undergo RI for six months.

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2. Case of the prosecution is that Urmila, sister of the deceased lodged a report P-5 in Police Station Lakhanpur to the effect that 4-5 years back from the date of incident the mother of Jagarnath had become mad, she was abusing her father on which her father pushed her, thereby mother of Jagarnath received injuries on her head and therefore accused Jagarnath was having grudge against her father and he used to say that her father was practicing witchcraft. On the fateful day when her brother Naresh was taking buffalo after grazing, Jagarnath assaulted Naresh with axe on his head and neck near the field of Ram Sai as a result of which Naresh fell down. Kunti came and informed her about the incident and thereafter she along with Kunti and wife of Naresh went to the place of occurrence and saw the dead body of Naresh. The incident was witnessed by Sukmania. Receiving this report Station House Officer, Police Station Lakhanpur registered a crime under section 302 of the Indian Penal Code, left for the scene of occurrence and prepared Panchnama P-7 of the dead body of Naresh after giving notice P-6 to the Panchas. Dead body of Naresh was sent for post mortem examination to Primary Health Centre, Udaipur where Dr. A.R. Jayant PW-1 conducted post mortem examination on the body of the deceased and prepared post mortem report P-1. The Station House Officer also made inquiry from the doctor under P-2 as to whether the axe, Lungi and Baniyan of the accused were stained with blood or not and whether the injuries which were found on the body of Naresh could be caused by the axe in question. Vide P-2, the doctor replied that it was possible to cause the injuries by the axe in question which were found on the body of Naresh. The clothes of the deceased

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were taken into possession under P-3 and blood stained and plain soil was taken into possession under P-9. The axe, Lungi and Baniyan of the accused were taken into possession under P-10. The site plan P-13 of the place of occurrence was prepared by the Patwari. The Investigating Officer prepared site plan P-14. After completion of the investigation the charge was filed in the court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the court of Sessions Judge, Ambikapur from where learned I Additional Sessions Judge, received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined ten witnesses. On the other hand statement of the accused was recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and stated that he is innocent. Learned Additional Session Judge after hearing the counsel for the parties convicted and sentenced the accused as mentioned in paragraph one of this judgment.

4. Homicidal death of Naresh is not in dispute.

5. As far as involvement of the accused/appellant in the crime in question is concerned, there is only one eyewitness to the incident namely Samania (Sukmania) PW-5 who informed Kunti and in turn Kunti informed the sister of the deceased namely Urmila PW-4 who lodged the report in the police station. Learned trial Court at the time of examination of Samania assessed her age to be six to seven years and the trial Court in

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the first instance put some questions in order to ascertain whether the witness was able to give answers after understanding the questions put by the Court and the trial Court reached the conclusion that the witness was able to give answer after understanding the questions. In her evidence Samania PW-5 has stated that she knew accused Jagarnath who was standing in the Court and he murdered Naresh as at about 11 a.m. when she was drinking water, Naresh came with buffalo, she saw the incident but she could not say as to with which weapon the accused assaulted Naresh. Thereafter, in paragraph 18 again she has stated that Jagarnath attacked Naresh with axe on his neck as a result of which Naresh fell down, she went to her house and informed her aunt Kunti. In the cross examination she has stated that she had come to Court along with her aunt and her aunt had not told her as to what is to be said in the Court. She herself witnessed the incident from a distance of about 100 ft. The whole case rests on the testimony of this witness.

6. Mr. Agrawal appearing on behalf of the accused/appellant argued that in paragraph 17 of her evidence this witness has stated that she could not see as to with which weapon the accused attacked the deceased and he further argued that even Kunti has not been examined by the prosecution who informed Urmila about the incident.

7. As far as the argument advanced by Mr. Agrawal is concerned, it is true that this witness in paragraph 17 of her deposition has stated that she could not see as to with which weapon the accused assaulted the deceased but later on in paragraph 18 she has categorically stated that

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Jagarnath attacked Naresh with axe, therefore, there is no discrepancy in the evidence of this witness. The requirement of the law before placing reliance on the evidence of a child witness is that the child witness is prone to tutoring and hence the Court should look for corroboration particularly when the evidence betrays traces of tutoring and the evidence of a child witness would always stand irretrievable stigmatized. It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. At the same time the evidence of a child witness cannot be discarded only on the ground that he or she may change its version. The evidence of a child witness would require the Court to scrutinize his evidence with care and caution.

8. In the light of the above principle if we scrutinize the evidence of Samania PW-5, she has categorically stated that accused assaulted the deceased with axe and she has further stated that she immediately informed her aunt about the incident. PW-4 Urmila sister of the accused who lodged the report in the Police Station which was at a distance of 13 Kms. within four and half hours from the time of incident, has clearly mentioned that she was at her residence and Kunti, aunt of Samania informed her and thereafter she along with Kunti went to the place of occurrence and saw the dead body of the deceased and there were injuries on the head and neck. In the FIR it has been clearly mentioned that the crime in question was witnessed by Samania, therefore

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witnessing of the crime by Samania is corroborated by the fact that her name finds place in the FIR. Moreover as per the medical report of Dr. A.R. Jayant PW-1, there were two injuries, one was incised wound in the size of 2x1x3" on the head as a result of which skull bone was fractured and the second incised wound was on the neck in the size of 1 ½ x1 x 1" and the doctor opined that the injuries were caused by the sharp and hard object. The axe in question was recovered from the possession of the accused under P-10 by the Investigating Officer and on inquiry from the doctor by the Investigating Officer as to whether the injuries present on the body of the deceased could be caused by the axe in question, the doctor replied that it was possible to cause the injuries by the axe in question which were found on the body of Naresh. Therefore, the evidence of Samania stands corroborated by the medical evidence and further by the fact that her name was mentioned in the FIR itself which was lodged within four and half hours from the time of incident.

9. Therefore, we are of the considered opinion that the involvement of the accused in the crime in question is established on account of the evidence of Samania and other circumstantial evidence. Looking to the nature of the weapon and part of the body where the injuries were inflicted it is evident that the accused assaulted the deceased with an intention to cause his death. Moreover it is not a case where the accused assaulted the deceased on the spur of moment, in a sudden quarrel because from the evidence on record it appears that the accused was already prepared for the assault and when he saw the deceased immediately without giving any chance to the deceased he assaulted him with axe in question.

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Therefore, in view of above, we are unable to accept the argument of counsel for the appellant that the offence against the accused does not travel beyond section 304-II of the IPC and he should be convicted under section 304-II of the IPC instead of section 302 of the IPC.

10. In view of above, we do not find any illegality or infirmity in the impugned judgment of the trial Court and accordingly the appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Kram